It was the duty of the solicitor for the applicant to exercise reasonable diligence to ensure that the notice of appeal was filed within the time prescribed for bringing the appeal even though the file was mislaid. If the file was mislaid, all that the solicitor had to do was to go to the Registry of the High Court, copy the heading of the case, prepare a notice of appeal and have it filed in the Registry. This was quite a simple thing to do, but no effort at all was made to do it. Instead, time was allowed to run and over a month passed before the file was found and then an attempt was made to file the notice of appeal.

There are numerous reported decisions, both here and in England dealing with the point in issue in this case. The cases show that the court has a discretion in the matter which must be exercised judicially after considering all the circumstances of the case. They also show that for an application to extend time to succeed there must be circumstances which warrant the exercise of the court's discretion in favour of the applicant. There is also a long line of cases which show further that a mistake or oversight on the part of the applicant's solicitor or on the part of the solicitor's clerk is not a sufficient ground for granting an extension of time to file a notice of appeal or a memorandum or petition of appeal. There is very strong support for this view in *Ratnam* v. *Cumarasamy*,[1] where Lord Guest in delivering the judgment of the Privy Council, observed at page 229:—

"The Rules of court must prima facie be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation."

In this case the only material before me was the affidavit of the appellant's solicitor. The ground there stated was that the solicitor's file was mislaid. That, as stated earlier, did not prevent the solicitor from filing a notice of appeal. In my judgment, the facts disclosed gross negligence on the part of the appellant's solicitor and did not merit the exercise of judicial discretion in favour of the applicant. The application was therefore dismissed.

Application dismissed.

Solicitors: *R.S. Balan & Co.; Cheo & Tio.*

COMPTROLLER OF PROPERTY TAX v. SHEEFA ALKAFF

[O.C.J. (Sinnathuray J.) January 7, 1981]
[Singapore — Originating Motion No. 26 of 1979]

Property Tax — Collection of — "Owner" — "For the time being" — Inclusion in the valuation list — Property Tax Act (Cap. 144), ss. 2, 18(2), 19 & 19A.

The respondent was the registered owner of No. 27 Third Avenue, Singapore. She purchased the said property from Great Wall Development Pte. Ltd. under a Contract dated December 4, 1975. Great Wall Development Pte. Ltd. were at the material time housing developers within the meaning of the Housing Developers (Licensing and Control) Act. Her purchase was completed on March 31, 1976. Before completion her solicitors sent the usual requisition to the Property Tax Department. The reply to this requisition dated November 12, 1975 had the following endorsement on it:—

"No. 27 Third Avenue, Singapore, has not been included in the Valuation List yet. Upon inclusion Notice under section 18(2) will be issued and tax will be recovered under section 19 of the Property Tax Act."

The Temporary Occupation Licence of the said property was issued on February 7, 1975 and Certificate of Fitness for Occupation was issued by the Chief Building Surveyor on November 27, 1975. Under the Contract the developers were required to pay all outgoings including property tax right up to the date of completion i.e. up to March 31, 1976.

The Comptroller sought to recover tax under section 19 of the Property Tax Act for the property as from February 7, 1975. The respondent did not dispute the fact that she was liable for all property tax as from the date of completion i.e. as from March 31, 1976. She however maintained that she was *not* liable for any property tax payable prior to March 31, 1976.

Held: (1) for tax to be a charge on property and for the owner to be liable for it, the property and the owner must be included in the Valuation List;

(2) the phrase "for the time being" applies only to limb (a) of the definition of "owner" in section 2 of the Property Tax Act where in each of the five cases a person is deemed to be "owner" of the premises when his name is in the Valuation List;

(3) the respondent's name was properly included in the 1976 Valuation List and therefore the respondent was liable to pay tax on the premises with effect from February 7, 1975.

Ong Poh Tan v. *Comptroller of Property Tax* distinguished.

Cases referred to:-

(1) *Haw Par International Ltd.* v. *Comptroller of Property Tax Singapore* — V.R.B. Appeal No. 682 of 1976 (unreported).

(2) *Ong Poh Tan* v. *Comptroller of Property Tax* [1977] 1 M.L.J. xliii.

(3) *Wankie Colliery Co.* v. *I.R.C.* [1922] 2 A.C. 51.

ORIGINATING MOTION.

Mrs. Lucy Hangchi (Legal Officer) for the appellant.

T.P.B. Menon for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: In this appeal from a decision of the Valuation Review Board (the Board) the facts are not in dispute. The property, No. 27, Third Avenue, is a new two-storey detached bungalow built in 1974. The owner (the respondent) purchased it from the developers, a private limited company. Under the contract of sale and purchase dated December 4, 1975, the developers were required to pay all outgoings including property tax up to the date of com-

pletion of purchase i.e. March 31, 1976.

Before the respondent entered into the contract, on November 12, 1975, her solicitors sent a requisition to the Property Tax Department, enquiring, *inter alia*, if all property tax on the property had been paid, and if not, the amount outstanding. The reply from the Department, on November 27, 1975, stated:

"No. 27 Third Avenue, Singapore has not been included in the Valuation List yet. Upon inclusion Notice under section 18(2) will be issued and tax will be recovered under section 19 of the Property Tax Act."

On May 17, 1976, the Chief Assessor, under section 18(2) of the Property Tax Act (Cap. 144) (the Act), issued a notice to the respondent proposing an annual value for the property of $32,400. It was accepted by the owner.

On the same day, the Comptroller of Property Tax (the appellant) also issued a notice to the respondent, under section 19A(1) of the Act. In the said notice, the respondent was required, under section 19 of the Act, to pay property tax for the property from October 31, 1974. This was the date given by the developers' architect to the appellant as the date when the building was completed.

The Temporary Occupation Licence of the premises, however, was issued by the Chief Building Surveyor on February 7, 1975. Having regard to the decision of the Board, on January 28, 1977, in *Haw Par International Ltd.* v. *Comptroller of Property Tax*[1] that, as a general rule, the date of completion of the building is the date of the issue of the Temporary Occupation Licence, the appellant amended the date of completion of the building from October 31, 1974 to February 7, 1975.

At the hearing before the Board, the respondent contended that she was liable for property tax only from the date of completion of the purchase of the property i.e. March 31, 1976. It was submitted on her behalf that she was not liable for property tax before that date as she was not the owner then. For the appellant it was contended, as the respondent was the "owner" within the meaning of the Act, she was liable for the arrears of property tax due on the property for the period between the date of completion of the building and the date of purchase of the property. The Board held that the respondent was not so liable. In the grounds of decision the Board stated:

"In our judgment, section 19A does not contemplate a situation where ownership changes, thus entitling the Comptroller to make a demand of the new owner. The term 'owner' in section 19A must therefore be taken to mean the 'owner' when the tax was due and payable."

The issue is whether the Board had erred in law in its interpretation of the word "owner" in the Act, and, in holding that section 19A of the Act does not contemplate a situation where there is a change in the ownership of a property.

In the interpretation section, section 2 of the Act, the word "owner" is defined as follows:

"'owner' means the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such premises were let to a tenant and includes the person whose name is entered in the Valuation List, ..."

Mrs. Hangchi for the appellant submits that the Legislature in using the expression "for the time being" in reference to the "person ... receiving the rent" clearly points to the present owner, that is to say, the person who "at present" or "now", is receiving the rent. Counsel contends had the Legislature intended the word "owner" to mean the previous owner, it would not have used the expression "for the time being". The argument is that the use of the words "for the time being" in the definition anticipates a constant change in the ownership of property, and that with every change, it is the present owner who is the "owner" under the Act. It is her contention that to give any other meaning to the expression "for the time being" would undermine the whole scheme of the Act.

For the respondent, Mr. Menon also invokes the intention of the Legislature. His contention is that the expression "for the time being" was deliberately inserted by the Legislature to refer to the owner "at the relevant time". He argues that if the Legislature had intended to fix a person who is at present the owner of a property, then the Legislature would have made this clear by leaving out the words "for the time being". Another submission is that the respondent does not come within any of the limbs of the definition of "owner" in the Act. In support of it, I am referred to the decision of the Board in *Ong Poh Tan* v. *Comptroller of Property Tax*.[2]

It appears from the submissions of counsel that the answer to the issue in this appeal lies in the construction of the phrase "for the time being" as used in the definition. I shall presently show that it is not so, but in deference to counsel who have given me copious written submissions I shall construe that phrase.

The phrase "for the time being" according to its context, can mean "the present time" or denote "a single period of time" which counsel for the respondent described as "at the relevant time". Its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time (see *Stroud's* Judicial Dictionary, 4th Edition, Vol. 5, page 2773). The ordinary meaning of the use of the phrase in its general sense is confirmed in standard dictionaries where it is given as "for the present" or "at the moment". The question is whether the phrase is used in its ordinary meaning in the definition of "owner" in the Act.

Before I answer it, it is useful to refer to the decision of the House of Lords in *Wankie Colliery Co.* v. *Inland Revenue Commissioners*.[3] In this case the House considered the phrase "any person for the time being owning or carrying on the trade or business" in a taxing statute which imposed excess profits duty on such a person. A similar submission as is before me was raised for the appellants. The House rejected it. It is sufficient that I refer to a passage in the judgment of Lord Buckmaster at pages 57/58:

"It is plain from reading these words that the decision de-

pends upon attributing the correct meaning to the phrase 'any person for the time being owning or carrying on the trade or business' ... in its ordinary meaning 'the person for the time being' would, in my opinion, be the person who at the time of the assessment, carried on the trade or business.... These considerations lead me ... to the only conclusion that I can form in this matter, which is that the Legislature has deliberately designed to make the person at the time of assessment the person responsible for payment of the duty."

I now come back to the Act. It too is a taxing statute. The long title states that it is "An Act to provide for the levy of tax on immovable properties and to regulate the collection thereof". For tax to be a charge on property (it is the first charge), and for the owner to be liable for it, the property and the owner must be included in the Valuation List. "Owner" as defined in the Act is given a legal meaning. One is "the person for the time being receiving the rent of the premises". As every word in a statute must be given a meaning, the phrase "for the time being" must be intended to add something to the concept in the expression "the person receiving the rent". In my view the phrase is inserted in the Act to identify, to point to "the person receiving the rent". The phrase must be given its ordinary meaning, the meaning given to it in its general sense. It means the person who at the time of the levy of tax is receiving the rent of the premises.

That, however, does not conclude the matter. On the facts the respondent is not the "owner" of the property as "the person for the time being receiving the rent of the premises". She is the "owner" of the premises as "the person whose name is included in the Valuation List". That is why I have said that construction of the phrase "for the time being" is not directly in issue before me.

Let me reduce to its elements the definition of "owner" in the Act. It reads as follows:

"'Owner' means —

(a) the person for the time being receiving the rent of the premises....

(i) on his own accord, or
(ii) as agent, or
(iii) as trustee, or
(iv) as receiver, or
(v) as a hypothetical landlord who would receive rent, and

(b) the person whose name is entered in the Valuation List."

If that be right, as I think it must be, the phrase "for the time being" applies only to (a) above where in each of the five cases a person is deemed to be "owner" under the Act. The phrase has no application to (b) above where a person is "owner" of the premises when his name is in the Valuation List.

On the facts in this appeal, on December 4, 1975, the date of the contract of sale and purchase, the respondent's premises, a new one, was not included in the Valuation List. In answer to the requisition of the respondent's solicitor, she was informed on November 27, 1975 that upon inclusion of the premises in the Valuation List "Notice under section 18(2) will be issued and tax will be recoverable under section 19 of the Property Tax Act". That notice was sent to her on May 17, 1976 making a proposal of an annual value of $32,400. She accepted the proposal and her premises was included in the 1976 Valuation List. She is accordingly the "owner" under limb (b) above of the definition of "owner".

I now come to the topic where the respondent was told that "tax will be recoverable" under section 19 of the Act. The relevant provision in the section is subsection (4). It provides as follows:

"Where any property is included for the first time in a Valuation List for any year, the tax in respect of such property shall, notwithstanding that the property has not previously been included in any Valuation List authenticated under this Act, be payable in the case of a building from the date of completion of such building and in the case of land from such date as may be determined by the Comptroller, but in none of these cases shall such tax be payable for more than six years prior to such inclusion. Such tax shall be calculated on the basis of the annual value ascribed to such property in such Valuation List."

The collection of taxes under section 19 is under section 19A of the Act. Subsection (1) provides as follows:

"Where it appears to the Comptroller that any tax is payable in respect of any property pursuant to the provisions of section 19 of this Act, the Comptroller shall give notice thereof to the owner of the property concerned stating the amount of the tax due and the period for which such tax is payable."

As I have said, the Board held that "section 19A does not contemplate a situation where ownership changes, thus enabling the Comptroller to make a demand on the new owner". It concluded that "owner" in the section "must be taken to mean the owner when tax was due and payable". To arrive at this decision, the Board sought support from some sections in the Act. For reasons I give I say no more than to mention them. They are section 6(2) that "tax shall be payable half yearly in advance ... by the owner"; section 17 that the vendor or transferor must give notice to the Chief Assessor of the sale or transfer of the property; section 43, of the continuing liability of the transferor who has not given notice; and section 35, proceedings for recovery of arrears.

There is a rule of construction that to construe one part of a statute one may resort to another part of the same statute.

"But this rule of construction is never allowed to alter the meaning of what is of itself clear and explicit; it is only when, as the court said in *Palmer's* case, 'any part of an Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose'; for as the judges said in the House of Lords in *Warburton* v. *Loveland*, 'no rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part.' 'It is not the duty of a court of law,' said Selwyn L.J. in *Smith's* case, 'to be astute to find out ways in which the object of an Act of the legislature may be defeated.'" (See *Craies* on Statute Law, 7th Edition, pages 98 and 99.)

For these reasons, the sections I have mentioned cannot be used to construe what I consider to be the plain meaning of "owner" in section 19A of the Act. I can find no good reason for "owner" in section 19A to mean anything else than as defined in the Act. There is nothing in the context of section 19A to the contrary.

The respondent's name was properly included in the 1976 Valuation List. Under section 19A the

Comptroller issued her a valid notice for tax payable on the premises as under section 19(1) tax was "payable from the date of completion of the work of erecting" the premises. And under section 19(4), the Comptroller may collect back tax for six years. The facts in this appeal are materially different from the facts in *Ong Poh Tan's* case. That case is to be distinguished from the present one, as unlike in that case, the respondent knew when she bought the premises that tax would be due on it when it is placed in the Valuation List. The tax is a charge on the premises. The respondent is accordingly liable to pay the tax on the premises with effect from February 7, 1975.

The appeal is allowed. By consent, there will be no order as to costs.

Appeal allowed.

Solicitors: *Oehlers & Choa.*

WEE TECK NEO & ORS v. R.M. PITTENDRIGH & ANOR.

[A.C.J. (Abdul Wahab Ghows J.) February 18, 1981]
[Singapore — District Court Appeal No. 71 of 1979]

Landlord and Tenant — Tenancy of premises for three years — Tenant becoming statutory tenant at end of three years — Notice asking for delivery of vacant possession of premises — Not valid notice to quit — Separation agreement between tenant and his wife — Wife occupying premises under separation agreement — Wife subsequently divorced — Children of tenant also residing in the premises — Children over 16 years of age at date of hearing — Member of family — Landlord not entitled to possession — Control of Rent Act (Cap. 266), s. 16.

In this case the first respondent became the tenant of the premises on the conditions contained in a letter written by him to the Choo Lye Huat, whose executors and trustees were the appellants. The tenancy was for a period of 3 years from March 1, 1957. On December 7, 1959 the Solicitors for Choo Lye Huat sent a letter to the first respondent asking him to deliver the premises by the end of February 1960. The first respondent however continued to occupy the premises after the expiry of the period of three years. In 1966 the first respondent entered into a separation agreement with his wife, the second respondent, under the terms of which the second respondent was to be entitled to occupy the premises. Subsequently in December 1971, the first respondent was divorced but she continued to live in the premises with her children. The children were then under 16 years of age. The appellants applied for possession of the premises but by the time of the hearing the children were over 16 years of age. The learned District Judge dismissed the application and the appellants appealed to the High Court.

Held: (1) the letter of December 7, 1959 requesting the first respondent to deliver vacant possession of the premises by the end of February 1960 did not determine the tenancy of the first respondent under the tenancy agreement;

(2) the tenancy of the first respondent came to an end upon the expiry of the last day of the three years term and thereafter the first respondent held the premises as a statutory tenant;

(3) the second respondent's occupation of the premises was protected so long as she remained the wife of the tenant but on her divorce neither she nor the first respondent could claim the protection of the Control of Rent Act as no member of the first respondent's family was residing therein, the respondent's two sons being then under 16 years of age;

(4) at the date of the hearing before the District Court the two sons were already over 16 years of age and were members of the tenant's family residing in the premises. The learned District Judge was therefore precluded by section 16 of the Control of Rent Act from giving judgment in favour of the appellants;

(5) the separation agreement did not transfer or assign the premises to the second respondent. The first respondent gave his wife nothing more than a licence to occupy the premises with the children of the marriage without interference from him.

Cases referred to:-

(1) *Mohamed Hidayatullah* v. *Tang Keo Eang* [1972] 1 M.L.J. 4.

(2) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

(3) *Che Esah & Anor* v. *Che Limah* [1966] 1 M.L.J. 36.

(4) *Brown* v. *Draper* [1944] 1 All E.R. 246.

(5) *Cobb* v. *Lane* [1952] 1 All E.R. 1199, 1202.

DISTRICT COURT APPEAL.

Kirpal Singh for the appellants.

Tay Soo Tee (*Lawrence Khoo* with him) for the respondents.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: This appeal arises from a claim of the appellants for the recovery of possession of the premises known as No. 33 Jervois Road, Singapore. The said premises were let to the first respondent/defendant on the conditions set out in the following letter dated March 8, 1957 from the first respondent to one Choo Lye Huat whose executors and trustees are the appellants/plaintiffs in this case:—

"Singapore, 8th March 1957

Choo Lye Huat, Esq.,
4A Robinson Road,
Singapore.

Dear Sir,

33 Jervois Road, Singapore.

Further to this morning's conversation between your goodself and the writer, I hereby agree to accept tenancy of 33 Jervois Road, Singapore, in accordance with the following conditions:—

(1) Monthly rent of $86 to be paid each month in advance for 1957.

(2) Lease to be of three years duration with effect from March 1, 1957, and subject to renewal, yearly in accordance with the City Council's revision of annual value and rents to be paid accordingly.

(3) Tenancy not to be transferable.

(4) Sub-letting not permitted.

I shall be glad if you will kindly indicate approval, and acknowledge receipt of this letter of agreement by signing the attached copy in the space provided for that purpose.

Yours faithfully,
Sgd. R.M. PITTENDRIGH."

On December 7, 1959 Messrs. Oehlers & Choa, acting for Choo Lye Huat wrote the following letter to the first respondent:—

"7th December 1959

Mr. R.M. Pittendrigh,
No. 33 Jervois Road,
Singapore.

Dear Sir,

re. No. 33 Jervois Road, Singapore.

We have been consulted by Mr. Choo Lye Huat your landlord of the above premises.

We understand from our client that the above premises was rented to you under an agreement for a period of three years at a monthly rental of $86 per month.